

(2009) 09 GAU CK 0031

In the Gauhati High Court

Case No : Writ Appeal No. 14 of 2008 in WP (C) No. 285 of 2003

State of Tripura and Others

APPELLANT

Vs

Subhankar Choudhury and Others

RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Tripura State Civil Services (Revised Pay) Rules, 1988 — Rule 13

Citation : (2010) 1 GLR 99 : (2009) 5 GLT 706

Hon'ble Judges : Maibam B.K. Singh, J;C.R. Sharma, J

Bench : Division Bench

Advocate : S. Deb and B. Datta, for the Appellant; S. Talapatra and S. Deb (Gupta), for the Respondent

Judgement

Maibam B.K. Singh, J.—Heard Mr. S. Deb, Learned Senior Counsel appearing on behalf of the appellants and Mr. S. Talapatra, Learned Senior Counsel appearing on behalf of the respondents.

2. This appeal is directed against the judgment passed by a Single Judge of this Court on 27.7.2007 in WP(C) No. 285 of 2003.

3. The writ petition was filed by the present respondents praying mainly for quashing two memoranda, one issued by the Finance Department, Government of Tripura being No. F4(6)-FIN(PC)/88, dated 30.5.2001 and another issued by the Director of Food, Civil Supplies and Consumers Affairs, Government of Tripura, being No. F2-1(35)-DF/02 dated 20.3.2003.

4. The first impugned memorandum dated 30.5.2001 was the reiteration of the clarification which had been issued by the Finance Department under office memorandum being No. F4(6)-FIN(PC)/88(P-1), dated 22.6.1990 to the effect that the highest Grade/Post/Scale would not be admissible to any employee before completion of 18 years of service in terms of Note No. 2(a)(i) and (ii) of Part C of Tripura State Civil Services (Revised Pay) Rules, 1988 (in short TSCS

Rules, 1988) as well as provisions in Part-III of the said TSCS Rules, 1988. In the said memorandum dated 30.5.2001, it was observed that Food and Civil Supplies Department, vide order No. F2-1(1)/DF/96 dated 14.3.1996 read with Order No. F2-1(6)/DF/97 dated 29.8.1997 had allowed some Store Keepers belonging to graded pay scale No. 25 under TSCS Rules, 1988, the movement to the highest grade before those store keepers having completed 18 years of service in violation of the clarification of the Finance Department contained in office memorandum No. F4(6)-FIN(PC)/88(P-I) dated 22.6.1990. Directions were issued in the first impugned memorandum dated 30.5.2001 to the Food and Civil Supplies Department to arrange for cancellation of the said orders No. F2-1(1)/DF/96 dated 14.3.1996 and No. F2-1(6)/DF/97 dated 29.8.1997 and for recoveries of payments made, if any, under the said orders from the concerned employees. The second impugned memorandum dated 20.3.2003 was issued by the Director, Food, Civil Supplies and Consumers Affairs, Tripura, Agartala, in pursuance of and in compliance of the first impugned memorandum dated 30.5.2001.

5. Learned Single Judge allowed the writ petition (C) No. 285 of 2003 and quashed the impugned memoranda vide the judgment dated 27.7.2007. The said judgment was passed after due hearing of the parties and relying on the common judgment of a learned Single Judge of this Court dated 11.6.2001 in respect of WP(C) No. 224/1999, WP(C) No. 226/99, WP(C) No. 228/99, WP(C) No. 302/99 and WP(C) No. 388/ 91 wherein issues involved in WP(C) No. 285/03 were also found to have been involved. Further, while, passing the said judgment dated 27.7.2007, the learned Single Judge took into account of a common judgment of a Division Bench of this Court passed on 3.10.2001 rejecting appeals being WA No. 105/2001, WA No. 106 of 2001, WA No. 107 of 2001, WA No. 108 of 2001, WA No. 109 of 2001, WA No. 155 of 2001, WA No. 158 of 2001, WA No. 159 of 2001 WA No. 160/2001, which had been filed challenging the said common judgment dated 11.6.2001. In the opinion of the learned Single Judge, the Finance Department's memorandum dated 22.6.1990 having been already quashed in earlier decision, the subsequent memorandum of the same department, dated 30.5.2001 on the same issue was of no consequence. As per the decision of the learned Single Judge, the writ petitioners are entitled to the top grade pay-scale from the respective dates as was sanctioned to them and no recovery is to be made from those petitioners who were granted the top grade after 8 years, instead of 10 years. It was also directed that recovery, if any, already made from the pay of the petitioners should be returned and that the financial benefits if withdrawn by virtue of the impugned memoranda should be released.

6. On perusal of the impugned judgment dated 27.7.2007 and the other judgments relied upon by the learned Single Judge, we find that the impugned judgment was passed purportedly relying on the earlier decisions of this Court. Sufficient and valid reasons are mentioned in the impugned judgment for arriving to the decisions. In our opinion, there is no perversity or illegality in the

impugned judgment and as such, no interference is called for.

7. We agree with the view of the Division Bench mentioned in the common judgment dated 31.10.2001 to the effect that no interpretation or clarification issued by the Finance Department purportedly in pursuance of any reference made under Rule 13 of the TSCS Rules, 1988 can have the effect of modifying all the provisions of the said Rules framed by the Governor of the State in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Rule 13 of the said Rules states that if any question arises relating to the interpretation of any of the provisions of these Rules, it shall refer to the Government of Tripura in the Finance Department. This Rule 13 does not empower the Finance Department to modify any provision of the said Rules. Any clarification issued by the Finance Department as done by issuing the impugned memorandum dated 30.5.2001, having the effect of modification of the provisions of the said Rules will not be sustainable in law.

8. Further we also agree with the view of the Division Bench mentioned in the common judgment dated 31.10.2001 to the effect that since the TSCS Rules, 1988 having been published in the official gazette, every interpretation or clarification in respect of any provision of the said Rules must also be published in the official gazette which is the usual mode of official publication so that all the concerned employees have knowledge of the interpretation or clarification and are not prejudiced.

9. In B.K. Srinivasan and Others Vs. State of Karnataka and Others, the hon'ble Apex Court held (SCC p.872-673, para. 15):

15. There can be no doubt about the proposition that where a law, whether Parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the "conscientious good man" seeking to abide by the law from the standpoint of Justice Holmes's "Unconscientious bad man" seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known. We know that delegated or subordinate legislation is all-pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by Parliamentary legislation. But unlike Parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed" by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication such a mode of publication may be sufficient, if

reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognized official channel, namely, the official gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient.

10. The vital difference between the Act of a legislation and a subordinate legislation was earlier noted in *Harla Vs. The State of Rajasthan*, The Acts of a Legislature are passed by accredited representatives of the people who in theory can be trusted to see that their constituents know what has been done, and this is done only after debates take place which are open to the public. The matter receives wide publicity through media. But the case is different with the delegated legislation and if we may add, also in the case of orders passed by the authorities like that, in the present appeal before us. In fact, the impugned memorandum dated 30.5.2001 is in the nature of delegated/ subordinate legislation. There ought to have been a reasonable publication of some sort in respect of the said memorandum either through the customarily recognized official channel, namely, official gazette or at least some other reasonable mode of publication for knowledge of the concerned employees apart from mere endorsement of a copy each of the memorandum to some officials. Having regards to the nature and purpose of power of interpretation of the TSCS Rules, 1988 by the Government of Tripura in the Finance Department, the principles enunciated in the above mentioned case must be held to be applicable. The same principle was applied in *Fatma Haji Ali Mohammad Haji and Others Vs. The State of Bombay*, *State of Maharashtra Vs. Hans George*, , *D.B. Raju Vs. H.J. Kantharaj and Others*, In our opinion, there is no illegality in the decision of the Division Bench dated 31.10.2001 warranting interference with the impugned judgment dated 27.7.2007 which has relied on the said decision of the Division Bench. In the facts and circumstances of the case, the decision of the hon"ble Apex Court in *Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others*, cited by the Learned Counsel of the appellants will not be applicable.

11. The directions of the learned Single Judge for not making any recovery from those petitioners who were granted the top grade after 8 years, instead of 10 years, was made after due considerations of the facts and circumstances of the case in the light of several decisions of the hon"ble Apex Court. In short, on equitable considerations, in exercise of his discretion and having regards to the decisions of hon"ble Apex Court in *Sahib Ram v. State of Haryana and Ors.* 1998 Supp. SCC 18 ; *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, : *Kerala State Road Transport Corpn. Vs. K.O. Varghese and Others*, and *P.H. Reddy and Ors. v. N.T.R.D. and Ors.* (2002) 2 SLR 634, the learned Single Judge made the said directions. We find that the learned Single in his discretion directed, for not making any recovery after consideration of the relevant factors like absence of any rule or fault on the part of the writ petitioners in the matter

of their movements to the top grade which was granted by the concerned authorities on their own understanding of the Rules and also about the hardships sure to cause to the petitioners for no fault of them. There was no illegality on the part of the learned Single Judge in proceeding in the manner he did. There is no sufficient ground for interfering with the said direction which was clearly made to advance the interest of justice.

12. It is to be noted that even in a case where the petitioner seeks relief by filing a writ petition under Article 226 against the state authorities in respect of an illegal taxation/exaction, the finding regarding the invalidity of the levy need not automatically result in a direction for the refund of all collections there of made earlier as held by the hon''ble Apex Court in M/s. Orissa Cement Ltd. and Others Vs. State of Orissa and others, relying on earlier decisions such as State of Madhya Pradesh Vs. Bhailal Bhai and Others, , Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, ; Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, ; Salonah Tea Co. Ltd. and Others Vs. Superintendent of Taxes, Nowgong and Others, In the opinion of the hon''ble Apex Court, the declaration regarding the invalidity of a provision and the determination of the relief that should be granted in consequence there of are two different things and, in the latter sphere, the court has and must be held to have a certain amount of discretion. Further, according to the hon''ble Apex Court, it is open to the court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the interest of justice. Thus, even when the levy of taxes is found to be unconstitutional, the court is not obliged to grant the order of refund. It is entitled to refuse the prayer for good and valid reasons.

13. In our present case, learned Single Judge in his discretion for valid reasons and to advance interest of justice directed for not making any recovery and no interference is warranted.

14. In the result, since we have not found any Illegality or perversity in the impugned judgment dated 27.7.2007 passed by the learned Single in WP (C) No. 285 of 2003, this appeal is rejected and it stands disposed of No order as to costs.